

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

KATHLEEN KOTTOM,

No. C 14-4492 LB

Plaintiff,

v.

ALBERT D. WALKER and
FARMERS NEW WORLD LIFE
INSURANCE COMPANY,

ORDER GRANTING PLAINTIFF'S
ADMINISTRATIVE MOTION AND
DENYING WITHOUT PREJUDICE
DEFENDANT'S SUMMARY-JUDGMENT
MOTION

[RE: ECF NOS. 40, 42]

Defendants.

INTRODUCTION

This lawsuit is about the rightful beneficiary to an life insurance policy. The decedent's widow Kathleen Kottom sued the decedent's former business partner Albert Walker to settle the issue. (ECF No. 1)¹ Farmers is a defendant and interpleaded the \$1 million policy amount. The issue now is Mr. Walker's summary-judgment motion, which he filed on March 23, 2015. (ECF No. 40.) Ms. Kottom filed an administrative motion, and then her opposition, saying that the motion is premature. (ECF Nos. 42, 45.) For the reasons stated herein, the court agrees and denies without prejudice the summary-judgment motion as premature.

¹ Citations are to the Electronic Case File ("ECF"); pin cites are to the ECF-generated numbers at the tops of documents.

STATEMENT

The following additional facts are relevant. The court held an initial case-management conference on January 15, 2015. (ECF No. 33.) The case-management statement discussed the parties' ongoing business relationship in what may be a declining business, Ms. Kottom's allegations that Mr. Walker may have breached his fiduciary duties, and her possible amendment of the pleadings following a forensic audit of the business's books. (ECF No. 28 at 5.) For those reasons, and based on a strategy of working toward private mediation in mid-May, the court set the deadline to amend the pleadings to May 28, 2015, which is beyond the court's customary two-months pleadings cut-off.

Thereafter, Mr. Walker filed his summary-judgment motion. (ECF No. 40.) On March 31, 2015, Ms. Kottom filed an administrative motion to continue the summary-judgment hearing, saying among other things that it is premature, facts were still developing through discovery, and mediation is scheduled for mid-May. (ECF No. 42.) The court waited the requisite four days to rule on the motion to give Mr. Walker time to file any opposition, which he did on April 3, 2015. (ECF No. 43.) In it, he notes that Plaintiff initially asked him only for a two-week extension and suggests that the summary-judgment motion is easily addressed based only on evidence of the insurance policy itself. (*Id.*) On April 9, 2015, Mr. Walker filed a notice that Plaintiff had not timely opposed his summary-judgment motion and that her administrative motion was not a sufficient opposition. (ECF No. 44.) On April 10, 2015, Plaintiff filed her opposition, reiterating her objections to the early summary-judgment motion. (ECF NO. 45.)

ANALYSIS

The court's strategy was to allow the parties to focus on mediation first without the spend that might attend unnecessary litigation, including premature amendment of the pleadings. That may have been implicit in the court's case-management order, but it was at least somewhat explicit at the case-management conference. The court is not opposed to early summary-judgment motions because often they can refine litigation. It generally expects to discuss the timing of early motions at a case-management conference that also addresses the interplay between motion and discovery. Another timing issue often is how a motion affects settlement negotiations. And here, the court's take-away

1 from the January case-management conference was that the parties' personal and business dynamics
2 might be better addressed by trying to do some discovery about the state of the business (even if
3 those claims are not yet part of the litigation) and then making a good effort to resolve them through
4 mediation.

5 That remains the court's view. There is plenty of time for an early summary-judgment motion
6 before a big spend on discovery, and there is room to adjust fact-discovery deadlines (without
7 affecting the trial date) to accommodate the process. Also, the court's view is that generally the
8 pleadings should be settled before a summary-judgment motion.

9 These issues and the timing of any early summary-judgment motion can be discussed at the next
10 case-management conference on May 28, 2015. To avoid a premature rush to amend the pleadings
11 before the parties update the court about their mediation, the court extends the date to amend the
12 pleadings to June 11, 2015.

13 The parties are free to put the case on the court's case-management calendar in April if their
14 views on timing are different.

15 CONCLUSION

16 The court grants in part Plaintiff's motion to extend the time period to extend the time period to
17 hear Defendant's summary-judgment motion. The court does not extend the time period until
18 September and instead will address timing issues at the May case-management conference.

19 For administrative reasons, the court denies the pending summary-judgment motion without
20 prejudice. After the court confers with the parties about the scheduling, Defendant may re-notice the
21 same motion by a one-page motion that cross-references the earlier-filed motion. Plaintiff thereafter
22 must respond on the ordinary five-week briefing schedule.

23 This disposes of ECF Nos. 40 and 42.

24 **IT IS SO ORDERED.**

25 Dated: April 10, 2015



26 LAUREL BEELER
27 United States Magistrate Judge
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